

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MTIL, INC.,

and

Case 13-CA-189867

UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA,
LOCAL 1103

Sylvia L. Taylor-Posey, Esq.,
for the General Counsel.

Walter J. Liszka, Esq., and
Tyler J. Bohman, Esq.,

for the Respondent.

Michael J. Healey, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Chicago, Illinois, from May 8 to 11, 2017. The United Electrical, Radio and Machine Workers of America, Local 1103 (Charging Party or Union), filed the charge in this case on December 15, 2016,¹ the General Counsel issued the complaint and notice of hearing (complaint) on February 23, 2017, and the General Counsel issued a first amended complaint and notice of hearing (amended complaint) on April 5, 2017. (GC Exh. 1(a), 1(c), 1(h).) The amended complaint alleges that MTIL, Inc., (Respondent) violated the National Labor Relations Act (Act) by threatening, interrogating, surveilling, granting, and promising benefits to, and soliciting grievances from, employees, terminating an employee, and failing and refusing to recognize and

¹ All dates are in 2016 unless otherwise indicated.

bargain with the Union.² (GC Exh. 1(h).) Respondent timely answered both the complaint and amended complaint, denying that it violated the Act.³ (GC Exh. 1(e), 1(j).)

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,⁴ and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, is engaged in the business of sanitizing plastic crates at its facility in Bolingbrook, Illinois, where it purchases and receives goods valued in excess of \$50,000 directly from points outside the State of Illinois. Respondent has admitted, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(j).) Respondent further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(j).)

II. PROCEDURAL ISSUE

Following the hearing, the General Counsel moved to correct the transcript. Two of the proposed corrections were not opposed by Respondent and I grant the General Counsel's motion with regard to these corrections.⁵

The General Counsel further moved to add 11 lines of testimony to the transcript. The General Counsel's motion states as follows:

Pg. 214 line 1: Substitute "Q. Can you please read Page 5, Line you can start with "I" on Line 3. (Witness peruses document.)" for "Q. Can you please read Page 5, Line you can start with "I" on Line 3. A. I recall that Ramone [sic] said that he

² In her brief, Counsel for the General Counsel (General Counsel) moved to withdraw the allegations contained in pars. VI(c)(i) and VI(g) of the amended complaint. (GC Br. at p. 2.) As no evidence was presented at the hearing regarding these allegations, the General Counsel's motion is granted.

³ During the hearing, the General Counsel moved to amend par. 9(a) of the complaint to indicate that on about November 30, 2016, the union via the filing and service of its representation petition in Case 13-RC-188930, requested that Respondent recognize it as exclusive collective-bargaining representative of the unit and bargain collectively with the union as exclusive collective-bargaining representative of the unit. There was no objection to the proposed amendment and I granted the General Counsel's motion.

⁴ Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

⁵ On the General Counsel's motion, and without objection, the transcript is corrected as follows: p. 19, l. 1, "protectoral" should be "pretextual;" p. 244, l. 14, "improper" should be "just and proper." In addition, I make the following corrections to the transcript: p. 244, l. 12, "improper" should be "just and proper;" p. 469, l. 9., "joint counsel" should be "General Counsel;" p. 561, l. 19, "disbursed" should be "dispersed;" and p. 692, l. 1 "plant closer" should be "plant closure."

knew employees smoked weed and used cocaine and if the union came in, management will be doing random drug testing. (We all were tested when we first were hired and there were some that were given drug tests about 6 months ago. I have never been random drug tested, but just tested at the start of my employment.) Ramone [sic] told us that a lot of people will be receiving production bonuses as promised. (I don't know what Ramone [sic] was talking about "as promised" because I had not been promised a bonus, and I had not received a bonus in the past.) He told us all, If you have any problems, you can come talk to management. If you don't like your job, quit. If you don't want to work with these wages, go find a new job. Ramone [sic] then started speaking in Spanish again, which I didn't understand."

Respondent opposed this proposed correction. I have reviewed my notes from the hearing, which indicate that the witness was reading from a pretrial affidavit he gave to the General Counsel. According to my notes, this testimony concerned drug testing. The General Counsel did not move to admit the affidavit as an exhibit at the hearing.⁶

My notes do not clearly reflect the breadth of the witness' testimony and do not show that the witness made all of the statements that the General Counsel seeks to add to the transcript. As such, I deny the General Counsel's motion to correct the transcript regarding the witness' testimony at page 214.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Business and Management Structure

Respondent's facility in Bolingbrook, Illinois, was previously operated by IFCO. (Tr. 360–361.) IFCO performed the same work as MTIL, the sanitizing of plastic crates for the food industry. (Tr. 320, 361.) The sign on the side of the building still read "IFCO" as of the date of the hearing. (Tr. 149, 535.) Additionally, some employees still wore shirts that said "IFCO" at the time of the hearing. (Tr. 98, 149, 535–536) Respondent's employee handbook describes its business as a provider of washing reusable plastic containers (RPC) for IFCO. (GC Exh. 66, p. 2.) Some of Respondent's employees were confused regarding the identity of their employer. (Tr. 158, 201.)

Ramon Haya-Trueba (Haya) manages Respondent's Bolingbrook facility. Cornelius Chandler is Respondent's plant manager. Respondent admits, and I find, that Haya and Chandler are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. In addition, Respondent admits, and I find, that management consultant Edgardo Villanueva is an agent of Respondent within the meaning of Section 2(13) of the Act.

⁶ In order to have a complete record, copies of the General Counsel's motion and Respondent's response have been marked as ALJ's Exhs. Nos. 1 and 2, respectively, and shall be placed in the exhibit file of the case.

Simon Lopez is Respondent's support manager. Lionel Hudson is Respondent's current human resources administrator.

Bobby Frierson began working at Respondent's Bolingbrook facility in June 2016 as a temporary worker through Clear Staff. (Tr. 189.) Respondent offered Frierson employment as a first shift production lead in August. (R. Exh. 5; Tr. 188.) He was discharged, for what Respondent asserts was insubordination and threats of violence, on December 14. (GC Exh. 71; Tr. 176.)

Other than those named above, the following employees, former employees, and former temporary employees of Respondent testified at the hearing: Oscar Bendezu, current employee; Gerald Bradley, current employee; Lidia Chavez, current employee; Crishonna Collins, current employee; Tasha Lee, former temporary employee; John Mierlak, current employee; Jeffrey Perkins, current employee; Willie Stevens, current employee; Matthew Wilmot, current employee; and Tonia Zekas, former office manager.

B. Respondent Learns of Union Organizing Activity

Sean Fulkerson is an organizer for the Warehouse Workers Organizing Committee (Committee), which was organized by the Union. (Tr. 234-235.) The Committee is a campaign similar to the Fight for \$15. (Tr. 235.)

Respondent's employees contacted Fulkerson about organizing in the fall of 2016. (Tr. 236.) Fulkerson conducted several informal meetings at a restaurant prior to October 17 (Tr. 237). The Union conducted its first formal meeting with Respondent's employees around October 17 at a hotel in Bolingbrook; about 20 of Respondent's employees came to this meeting (GC Exh. 74; Tr. 237). Fulkerson provided union cards to Frierson and Bendezu to collect and return. (Tr. 239.) Frierson also received Union literature, which he distributed at work. (Tr. 240.) Fulkerson described Frierson as the "point person" for the Union's effort to organize Respondent's employees. (Tr. 240.)

Frierson and Bendezu collected cards from other employees between October and November or December and returned them to Fulkerson. (GC Exhs. 2-29, 31-60; Tr. 110, 263, 353.) Some of the cards identify the employer as IFCO. (GC Exh. 6, 14, 19, 23, 27, 33, 43, 45, 46, 47, 48, 49, 53, 56, 60.) Some cards identify the employer as both IFCO and MTIL. (GC Exh. 3, 5, 10, 44, 52.) One card identifies the employer as Sure Staff and another identifies the employer as Sure Staff/IFCO. (GC Exh. 25, 32.) One card does not identify an employer. (GC Exh. 37.) The remaining cards identify the employer as MTIL. Many of the cards do not identify the person who collected them. (GC Exh. 2-13, 17-25, 27, 29, 31, 34-40, 47, 49, 50-51, 53-56, 59-60.) However, Frierson and Bendezu testified that they observed each of these cards being signed. Of the cards in evidence that are dated, all except one have dates in October or November. (GC Exh. 2, 7-12, 14-26, 28-29, 31-33, 35-36, 38-42, 44-48, 50, 52-54, 56-57, 59-60.)

The Union filed a petition seeking an election with the NLRB on November 30. (GC Exh. 61.) The petition filed listed MTIL, Inc., as the employer. (GC Exh. 61; Tr. 356.) The petition was served on and received by Respondent on November 30. (GC Exh. 62; R. Exh. 3; Tr. 608.) The Union sought to represent the following unit of Respondent's employees:

All full-time and regular part-time production and maintenance employees including quality control, sort stackers, tickers, wrappers, stackers, forklift operators, throwers, mechanics, pallet jackers, loaders, lead persons, and janitors employed by the Respondent at its facility currently located at 400 West Crossroads Parkway, Bolingbrook, Illinois 60440; excluding all office clerical employees, employees of temporary agencies and guards, professionals and supervisors as defined by the Act.

(GC Exh. 1(h), (j).)

A stipulated election agreement was signed on December 7, with the election scheduled for December 16. (GC Exh. 63.) The *Excelsior* list, provided by Respondent, lists 86 employees. (GC Exh. 64.)

C. *The Respondent's Reaction to the Union Campaign*

The day after receiving the election petition, Haya contacted Richard Wessels, a labor relations attorney. (Tr. 608-609.) Wessels came to the facility met with Haya, Chandler, and Lopez on December 2, where he provided training and materials to them regarding procedures and what they could and could not do during the campaign. (Tr. 363, 470, 609-610, 613.) Some of the printed materials were given in Spanish. (R. Exhs. 9, 10; Tr. 610.) Wessels also showed the managers a training video, which was in English without subtitles. (R. Exhs. 11, 11A, 11B.) These materials were not distributed to or shown to employees.

Wessels, in turn, contacted Villanueva and told him that Respondent could use his services. (Tr. 676-677.) Villanueva, who is not an attorney, described himself as very knowledgeable regarding labor law and labor campaigns. (Tr. 676-677.) Respondent hired Villanueva as a consultant for the Union organizing drive. (Tr. 676.) In this capacity, he conducted meetings with the workers and provided translation services at meetings conducted by Haya. (Tr. 678.)

Villanueva also provided further training and written materials to Haya, Chandler, Lopez, and Hudson. (R. Exhs. 22, 23, 24; Tr. 679-680.) The materials provided by Wessels and Villanueva advised Respondent's managers what they should and should not do during the Union's campaign. (R. Exhs. 9, 10, 11; Tr. 679-680.) For example, managers were advised not to make promises or threats, and not to interrogate employees. (R. Exh. 10.) Chandler had received training on dealing with union campaigns through a previous employer. (Tr. 470-471.)

D. *Early December Conversations Regarding the Union*

Frierson left flyers in support of the Union in Respondent's break room in early December. (GC Exh. 72.) The flyer contained a large photo of Respondent's employees, including Frierson,

at the top.⁷ (R. Exh. 21.) Under the photo appeared signatures of several employees. At the bottom, under the signatures, the flyer said, “We Are the Majority!” and “UE YES.” (GC Exh. 72.)

5 Tasha Lee, a former employee of Respondent, was in the break room of the Bolingbrook facility in December, where she observed Chandler pick up one of the flyers. (GC Exh. 72; Tr. 335.) When Chandler picked up the flyer, he said that if the Union wins, there’s going to be a lot of people getting fired.⁸ (Tr. 336.)

10 Employee Matthew Wilmot testified that he observed Haya and Chandler looking at a union flyer in the office. (GC Exh. 72; Tr. 324.) They asked Wilmot if he signed the flyer. (Id.) Wilmot said yes. (Id.) Chandler was not asked about the incident in the office involving Wilmot. However, Chandler admitted becoming aware of Frierson’s union activity in early December. (Tr. 521.) Also in early December, employee Willie Stevens and other employees
15 began wearing Union buttons at work. (Tr. 96, 204.) Chandler asked Stevens about his button. (Tr. 205.)

E. Discussion in Haya’s Office on December 2

20 While she worked for Respondent, Zekas had an office next to Haya’s. (Tr. 35.) Due to a gap between the wall and window, she was able to hear conversations in Haya’s office while she was in her office. (Tr. 35.) On December 2, Zekas overheard a conversation in Haya’s office between Haya and employee Labrie Ousley.⁹ (Tr. 36.) Haya asked Ousley to get his line to vote against the Union. (Tr. 36.) Haya offered Ousley \$500 if he could get the line to vote against the
25 Union. (Tr. 36.) Ousley replied that he could do it and he could get everyone to cooperate with him. (Tr. 37.) When the conversation moved out into the hallway, Zekas heard Ousley say that he could definitely get the whole line to vote nonunion. (Tr. 37.) Haya gave Ousley 3 green company t-shirts.¹⁰ (Tr. 37.) As Ousley was walking away, Haya instructed Zekas to process a \$1.25 per hour raise for Ousley.¹¹ (Tr. 38-39.) This raise made Ousley one of the highest paid
30 production workers in the facility.¹² (R. Exh. 15.)

⁷ R. Exh. 21 is an enlarged, color version of the photograph contained in GC Exh. 72.

⁸ Chandler testified “no, sir,” in response to a leading question asking whether he said if the union gets in [there are] going to be a lot of people fired.” (Tr. 479.) However, Chandler admitted seeing the flyer. (Tr. 478.) I credit the testimony of Lee over that of Chandler as it was not given in response to a leading question and was more descriptive. I also found Lee to be a more credible witness.

⁹ Ousley did not testify at the hearing.

¹⁰ All employees are required to wear company tee shirts; regular employees wear orange tee shirts. Only lead employees wear green t-shirts. (Tr. 37-38.)

¹¹ Haya admitted giving Ousley a raise in December. (Tr. 655-656.)

¹² Others who made more than Ousley were supervisors, lead employees, office workers, or specialized employees: Richard Aguilar (mechanic); Gerald Bradley (forklift driver); Lidia Chavez Jiminez (lead); Courtney Cole (forklift driver); Germany Couch (lead); Bernal Fox (lead); Anthony Gordon (unknown); Lionel Hudson (human resources administrator); Tashon Hutchins (forklift driver); Jaquille Johnson (lead); Jasmine Johnson (lead); Jonathan Martinez (supervisor); John Mierlak (mechanic); Rashawn Mitchell (mechanic); Daniel Montgomery (lead); Maria Morales (lead); Donato Perez (mechanic); Jose Ramos (forklift driver); Darnell Robinson (forklift driver); Savstrio Sotelo (forklift operator); Willie Stevens (forklift driver); John Stewart (mechanic); John Trammel (forklift driver); Angelica Velazquez (office worker); Niyata Warren (office worker); Quintarus White (lead);

F. First Mandatory Meetings (December 7)

On December 7, Respondent conducted mandatory meetings for all employees. (Tr. 146, 308, 614, 688.) The meetings were run by Haya and Villanueva (Tr. 208–209.) Haya spoke at the meetings in Spanish and his words were translated into English by Villanueva. (Tr. 147, 309, 665, 689.) About 90 percent of Respondent’s employees speak English. (Tr. 633.)

Haya, through Villanueva, advised the employees that he did not want the Union and that the Union would be bad for them.¹³ (Tr. 148, 309–310.) Haya and Villanueva also stated that the plant would move or close down if the Union won the upcoming election.¹⁴ (Tr. 148, 310, 326, 346.)

G. Respondent’s Bonus Policy and Bonuses Distributed in December

According to Lopez, Respondent started a bonus program during the summer of 2016 to motivate employees. (Tr. 371.) According to Lopez:

I would say June or July. We started, because that's the way – how our company works in the other facility that we have, in a bonus, a monthly bonus, that is given to the employee to motivate them and regarding the good work that they've done in their attendance.

(Tr. 371.) Lopez testified that bonuses were based on employees’ production and attendance. (Tr. 371.) However, Lopez could not explain the requirements for earning a bonus. He testified that he has a document explaining the requirements for receiving a bonus, but it has not been shared with employees. (Tr. 418.) No such document was produced at the hearing.

When asked about the bonus program, Chandler testified, “The more they throw, the more they bonus.” (Tr. 503.) Chandler was not aware of any specific production goal that would trigger a bonus and stated that such a goal would be within Lopez’ knowledge. (Id.) Although Hudson is responsible for administering the payroll, he was not asked about the December bonuses or Respondent’s bonus policies. (Tr. 424.)

Scythell Williams (office worker); and Taurus Young (lead). (GC Exh. 64; R. Exh. 15; Tr. 424, 467–468, 652–653.) Where the positions of these employees were stated differently in the stipulation of the attorneys in the case than it was in GC Exh. 64, I credit the stipulation.

¹³ Although two employees testified that they told the other employees that the Union would be bad for them, I do not credit this testimony. (Tr. 593, 667.) I have instead credited the testimony of Bendezu and Frierson, who I found to be more credible, that the employees were not given an opportunity to speak. This testimony was corroborated by Villanueva, who testified that there was no question and answer period and that the only people besides himself and Haya and who spoke at the meetings were supervisors. (Tr. 695.)

¹⁴ Although the employees related slightly different words as related by Haya and Villanueva, I find that the clear message was that Respondent would close or relocate the Bolingbrook facility if the Union won the election. I did not credit the testimony of Villanueva, who spoke in generalities and denied making promises or threats in response to leading questions, instead of recounting what was said by whom at the meetings. (Tr. 609–698.)

Several employees received handwritten bonus checks in December. (R. Exh. 15.) Lopez testified that bonus checks were prepared manually in December because Zekas took a company computer with her when she was discharged. (Tr. 389-390.) He testified that Respondent got its computer back around December 8 or 9. (Tr. 417.) The handwritten bonus checks are dated December 12 and 13. (R. Exh. 15.) .

In the pay period ending May 29, Respondent gave 24 employees bonuses, ranging from \$25 to \$75. (R. Exh. 12.) In the pay period ending July 3, Respondent gave 37 employees bonuses, ranging from \$25 to \$50.¹⁵ (Id.) In the pay period ending August 7, Respondent granted 28 employees bonuses, ranging from \$15 to \$100.¹⁶ (Id.) In the pay period ending September 4, Respondent granted bonuses to 26 employees, ranging from \$15 to \$50. (Id.) In the pay period ending October 2, Respondent granted bonuses to 31 employees, ranging from \$15 to \$100.¹⁷ (Id.) In the pay period ending on October 30, Respondent granted bonuses to 30 employees, ranging from \$15 to \$50. (Id.) In the payroll period ending on November 6, Respondent granted a \$45 bonus to one employee, Labrie Ousley. (Id.) In the pay period ending on November 13, Respondent granted a \$400 bonus to Chandler. (Id.)

The handwritten checks are written to the following employees in the following amounts:
 Antoinette Carter (\$50); Rocio Ambriz Hernandez (\$100); Peter Ansah (\$25); Oscar Bendezu (\$100); David Cockream (\$75); Cardell Coleman (\$50); Diamond Daniels (\$50); Terance Eiland (\$50); Delisa Fields (\$100); Bernal Fox (\$100); Jennifer Griffen (\$50); Felipe Gutierrez (\$50); Jaquille Johnson (\$50); Jasmine Johnson (\$50); Marshawn Johnson (\$100); Robert Jones (\$50); Daniel Montgomery (\$25); Demarcus Mullen (\$50); Jascenda Norfleet (\$50); Jeffrey Perkins (\$100); Guillermina Sandoval (\$75); Anthony Small (\$50); Donald Smith (\$50); Robin Steele (\$25); Andre Tidwell (\$50); John Williams (\$75); Krystle Wilson (\$50); Devonta Worthy (\$50). This represents 28 employees, 6 of whom received \$100 bonuses.¹⁸

Payroll records further indicate that the following employees received bonuses via their paychecks for the payroll period ending December 11: Peter Ansah (\$25); Lionel Baker (\$100); Terel Blue (\$25); Kedric Calvin (\$100); Cornelius Chandler (\$100); Jimena Chavez (\$50); Lidia Chavez Jiminez (\$50); Cardell Coleman (\$50); Shavonne Coleman (\$50); Crishonna Collins (\$50); Germany Couch (\$25); Xavier Duncan (\$100); Romeo Edwards (\$100); Danarra Ellis (\$25); Delisa Fields (\$50); Bobby Frierson (\$100); Maria Gonzalez Arambula (\$25); Anthony Gordon (\$50); Felipe Gutierrez-Ocho (\$50); David Henton (\$50); Cecil Hubbard (\$25); Marcus Hogle (\$50); Saaida Jackson (\$25); Robert Jones (\$50); Christopher Lee (\$15); Maria Lopez (\$100); Johnathan Martinez (\$50); Cameron McClendon (\$50); Marquita Miller (\$100); Daniel Montgomery (\$25); Demarcus Mullen (\$50); Arthur Newell (\$25); Laura Ortiz (\$25); Labrie

¹⁵ The name of the employee receiving the bonus at the top of the second page of R. Exh. 12 is not readable. However, the employee received a bonus of \$50. The name of the first employee on each subsequent page of R. Exh. 12 is also not visible.

¹⁶ The employee receiving the \$100 bonus was Jose Ramos. (R. Exh. 12.) According to the *Excelsior* list, Ramos is a unit employee. (GC Exh. 64.)

¹⁷ Employees Efren Garcia, Tommy Johnson, and Jose Ramos received \$100 bonuses during this pay period. Of these employees, only Ramos appears on the *Excelsior* list of unit employees.

¹⁸ Jeffrey Perkins does not appear on the *Excelsior* list and is a supervisor. (GC Exh. 64; Tr. 652.) Thus, 27 unit employees were given bonuses in December via handwritten checks.

Ousley (\$100); Clayton Owen (\$25); Jeffrey Perkins (\$50); Guillermina Sandoval (\$50); Mack Shell, Jr. (\$25); Luverna Shields (\$25); Anthony Small (\$50); Caprice Spann (\$25); Anabel Tejada (\$100); Quintarus White (\$100); John Williams, Jr. (\$25); Krystle Wilson (\$50); Devonta Worthy (\$50); Taurus Young (\$100); Georges Yousif (\$100).¹⁹ (R. Exh. 15.) Of these employees, Cornelius Chandler, Anthony Gordon, Johnathan Martinez, and Jeffrey Perkins do not appear on the *Excelsior* list. (GC Exh. 64.) Chandler, Martinez, and Perkins are supervisors.

Thus, in addition to the handwritten checks, Respondent gave bonuses to 54 unit employees via its regular payroll in December. Some employees, including Ansah, Coleman, Fields, Gutierrez-Ocho, Jones, Montgomery, Mullen, Sandoval, Small, and Williams, appear to have received 2 bonuses in December. Although the dollar amounts of the bonuses as shown on the checks and in the payroll are the same for most employees, at least 3 (Fields, Sandoval, and Williams) received different amounts.²⁰

Chandler testified that following Zekas' discharge, Hudson had problems processing the payroll. (Tr. 375.) Chandler further testified that he and Lopez decided to issue handwritten bonus checks to avoid complaints by employees. (Tr. 475-477.)

H. Events of December 9

On December 9, Hudson distributed paychecks in the break room. (Tr. 151.) Frierson's check contained a \$100 bonus. (Tr. 152.) While paychecks were being distributed, Haya asked Frierson, "You like that, don't you?" and said "I treat you nice." (Tr. 152.) Frierson said yes, but you should treat everyone the same. (Tr. 152.) Haya then asked what he could do to get the union not to come in. (Tr. 152.) Frierson told him it was too late; they already got his vote. (Tr. 153.) Haya asked what should he tell people; what should he do? (Tr. 153.) Frierson told Haya that the way he'd been treating people, he had already lost them. (Tr. 153.) Frierson told Haya he had lost the respect of all the workers. (Tr. 153.) Later, the conversation became private. (Tr. 153.) Haya said don't I treat you good, don't I do so much for you? (Tr. 153.) Frierson told Haya, "the election is next week, you're on your own." (Tr. 154).

I. Conversations on December 12

On December 12, the Union produced another flyer with Frierson's picture on it. (GC Exh. 73.) Frierson placed about 150-180 copies of this flyer in the break room. (Tr. 157-158.) After Frierson placed the newsletter in the break room, Haya came to talk to him. (GC Exh. 73; Tr. 160.) Haya said, "nice picture." (Tr. 160.) Frierson "laughed it off." (Tr. 160.) Frierson

¹⁹ Kedric Calvin, Cornelius Chandler, Xavier Duncan, Romeo Edwards, Bobby Frierson, Marquita Miller, Labrie Ousley, Quintarus White, Taurus Young, and Georges Yousif received \$100 bonuses in December via the payroll. All of these employees, except Chandler, appear on the *Excelsior* list. Employees Coleman, Fields, Gutierrez-Ocho, Jones, Mullen, and Small received \$100 bonus in December as a result of the combination of the bonuses paid by handwritten check and via the payroll. Employee Sandoval received a bonus of \$125 in December as a result of the two bonuses.

²⁰ Respondent distributed 81 bonuses to 78 unit employees in the month of December, between the time of the filing of the petition and the agreed upon election date. In total, 16 unit employees received bonuses of \$100 or more in December.

believed that Haya was referring to the flyer because it was the only picture of him in the building. (Tr. 160–162.)

Later that same day, Frierson had a conversation with Chandler near the water fountain. (Tr. 161.) Chandler told Frierson that everyone is not going to make it. (Tr. 162.) He went on to say, “the important people, yeah, we can take care of them, but we can’t take care of everybody.” (Tr. 162.) Chandler mentioned that he could give Frierson a \$3 raise. (Tr. 163.) Frierson said instead of offering me a \$3 raise, there are 6 people in line, just give everyone \$0.50. (Tr. 162–163.)

J. Events of December 13

Around noon on December 13, Frierson was speaking with two other employees near the time clock. (Tr. 164.) Chandler and Bradley were standing nearby. (Tr. 164.) Chandler called Frierson and the others over and asked them if he paid them to stand around. (Tr. 164–165.) Frierson replied no. (Tr. 165.) Chandler asked what they were talking about. (Tr. 165.) Frierson replied normal, everyday stuff. (Tr. 165.) Chandler again asked if he paid them to just stand around. (Tr. 165.) Frierson replied, “no, sir, boss.” (Tr. 165.) Chandler asked if Frierson was being funny, to which Frierson replied, “no, sir, boss.” (Tr. 165.) Chandler then told Bradley he was giving Frierson a verbal warning. (Tr. 165.) Frierson asked if there was anything else Chandler needed him to do, again referring to Chandler as “boss.” (Tr. 165.) Frierson then returned to the line and completed his shift. (Tr. 165–166.)

After completing his shift, Frierson went looking for Chandler to get a copy of his write up. (Tr. 168, 216, 426.) Chandler told him he was not writing him [Frierson] up. (Tr. 168, 216.) Frierson told Chandler that he needed a copy of the write up because Chandler made a scene on the production floor. (Tr. 168.) Chandler told Frierson to leave the building, which he did. (Tr. 168, 216.) Frierson was not escorted out of the building.²¹ (Tr. 169.)

In the parking lot, Frierson spoke to Fulkerson. (Tr. 170, 247.) While he was talking to Fulkerson, second shift employees, including Bradley, began coming out of the building. (Tr. 170.) Frierson found this odd because employees are not supposed to leave the building during their shift. (Tr. 171.) The employees surrounded Frierson’s car, threatened to “kick his ass,” and asked if Frierson wanted to fight. (Tr. 172, 248.) Fulkerson intervened and everyone calmed down. (Tr. 173, 248.) No physical contact was made during this incident.²² (Tr. 173.)

K. Second Mandatory Meetings

On December 14, Respondent held a second set of mandatory meeting for employees to discuss the upcoming union election. Haya again conducted the meetings in Spanish and his

²¹ I do not credit Chandler’s or Bradley’s version of events regarding this exchange in the office, as their testimony differed in regard to important details and because their testimony was contradicted by that of Hudson.

²² I do not credit Bradley’s confusing account of this encounter. According to Bradley, he followed Frierson out to the parking lot with 2 other employees, one of which was his nephew. (Tr. 556.) Bradley said that Frierson said, “I don’t want to talk, I want to fight.” (Tr. 556.) Bradley’s disjointed testimony was not supported by any other witness and I decline to credit it.

words were translated into English by Villanueva. Haya said the union was no good. (Tr. 311.) He said that if the union wins, they would take employees to a strike. (Tr. 311.) Haya stated that there would be drug tests and employees who did not pass would be fired. (Tr. 213, 312, 347–348.) Haya also told employees if you do not like your job, quit. (Tr. 214.) He also said if you do not want to work with these wages, go find a new job. (Tr. 214.)

Haya, through Villanueva, also told employees that Respondent would begin paying for holidays. (Tr. 312.) Employees were paid for Christmas in December. (Tr. 313.) Haya admitted that employees were paid for Christmas due to employee complaints of not being paid for Thanksgiving.²³ (Tr. 623.)

L. Events of December 14

Hudson conducted an investigation regarding the incidents of December 13. Hudson first obtained a statement from Bradley. (R. Exh. 16.) After obtaining Bradley's statement, Hudson recommended suspending Frierson. (GC Exh. 70; Tr. 433.) After Frierson was suspended, Hudson interviewed Bradley and attempted to interview other employees. (Tr. 433–434.) Hudson testified that no other employee was willing to provide a statement. (Tr. 434.) Chandler also provided a written statement at some point on December 13. (R. Exh. 19.) Hudson spoke with Chandler and Lopez, who both recommended termination. (Tr. 434.) Hudson also consulted with Respondent's attorney, who also recommended that Frierson be terminated. (Tr. 434–435.)

Frierson reported for work as usual on December 14. (Tr. 174.) Frierson worked for 45 minutes to an hour when he was summoned to the office. (Tr. 174.) Chandler, Hudson, and a security guard were present in the office when he arrived. (Tr. 175.) Hudson told Frierson that he was suspended pending an investigation. (Tr. 175.) Frierson asked what the investigation was about and who else was suspended. (Tr. 175.) Hudson told him the investigation was about an incident the previous day and not to worry about who else was suspended. (Tr. 176.)

Hudson handed Frierson a disciplinary action report, which stated that Frierson committed the offenses of insubordination and making a threat of violence. (GC Exh. 71; Tr. 176–177.) Specifically the document stated that

The employee was insubordinate when he was told to stop talking with other associates and return to his work area. Bobby Frierson approached his supervisor in a threatening manner and also threatened other co-workers verbally.

(GC Exh. 71.)

²³ Haya denied promising employees benefits or soliciting complaints at this meeting. (Tr. 623.) Villanueva, however, testified that Haya mentioned that the company was looking at the possibility of paying employees for the upcoming Christmas holiday. (Tr. 696.)

M. Respondent Discharges Frierson

At about 7 or 8 p.m. that same evening, Frierson received a call at home from Hudson. (Tr. 179.) Hudson said that after contacting the company's lawyers, it was in the company's best interest to terminate Frierson. (Tr. 180.) Frierson's personnel records contain a discharge form, but Frierson never received a copy of it. (GC Exh. 70; Tr. 180.) The form indicated that Frierson was discharged for threatening to commit an act of violence against another and for insubordinate behavior in refusing to exit the facility on December 13. (GC Exh. 70; Tr. 180-181.) Hudson testified that the only threat of violence adduced by his investigation was, "I believe he [Bradley] said Bobby threatened to kick his ass or something like that." (Tr. 446.)

Prior to December 13, Frierson had never been suspended, written up, or received a verbal warning. (Tr. 182-183.) Frierson testified that he observed acts of physical confrontation at the Bolingbrook facility at least once a week. (Tr. 183.) Frierson never observed an MTIL employee discharged for engaging in such acts. (Tr. 183-184.)

By way of example, Frierson observed a physical altercation between employees Labrie Ousley and Marquita Moore. (Tr. 184.) Moore was pregnant at the time of the altercation. (Tr. 51-53, 184.) The police were called to the facility. (Tr. 54.) Initially, no action was taken against Ousley despite Zekas' recommending a 3-day suspension. (Tr. 56.) Eventually, Moore was suspended, although no independent disciplinary action report exists for Moore for this altercation.²⁴ A disciplinary action report for Ousley for this altercation, which is listed as having occurred on November 23, is dated November 30. (GC Exh. 69.) Ousley was assessed a 3-day suspension, which was taken November 26 through 29.²⁵ (Id.)

Zekas testified that she observed weekly incidents involving employees fighting from monitors in her office linked to security cameras in the facility. (Tr. Exh. 43.) Some employees were disciplined for fighting and others were not. (Tr. 44.) Zekas remembered seeing about 50 reports in employee files involving fighting. (Tr. 45.) Of those reports, only about 20 resulted in any discipline and only 3 resulted in termination. (Id.)

Other employees also testified to observing fights at Respondent's facility. Bendezu testified he observed 2 fights. (Tr. 313.) Wilmot testified that he observed 3 fights. (Tr. 329.) Collins testified that she observed about 3 fights.²⁶ (Tr. 349.)

²⁴ A disciplinary action report for January 4, 2016, lists a suspension/final for Moore for a physical altercation on November 23. (GC Exh. 68.) However, there is no description of the altercation or a length for the suspension listed. Interestingly, a disciplinary action report for Moore dated December 30 does not list the November physical altercation among past disciplinary actions. (GC Exh. 67.)

²⁵ The suspension began the Saturday after Thanksgiving and continued through the following Tuesday. No explanation was given as to why the disciplinary report post-dated the suspension by a week.

²⁶ Respondent produced two disciplinary action reports showing that other employees have been terminated for fighting. (R. Exhs. 17, 18.) However, these employees were terminated for fighting in an incident in February 2017, almost two months after Frierson was terminated. (Id.) Respondent further produced a disciplinary report indicating that another employee had received a written warning for insubordination. (GC Exh. 68.) This employee, despite receiving written warnings for insubordination

N. Union's Support and Request for Recognition

By November 30, Frierson and Bendezu collected union authorization cards from 56 employees.²⁷ (GC Exhs. 2–12, 14–29, 31–60.) Each card clearly states that the signing employee accepted membership into the Union and authorized it to represent him or her. (Id.) The cards of Demarcus Mullen and Robin Steele listed Sure Staff as the employer; however, both appear on the *Excelsior* list. (GC Exhs. 25, 32, 64.) One card, signed by Daniel Montgomery, did not identify the employer; his name also appears on the *Excelsior* list. (GC Exhs. 37, 64.) As of November 30, the unit contained 86 employees. (GC Exh. 64.) Respondent did not contest the appropriateness of the petitioned-for unit. (GC Exh. 63.)

About 20 employees attended the Union's first formal organizing meeting in October.²⁸ (GC Exh. 74; Tr. 237.) Fulkerson was surprised by the high level of attendance. (Id.) Fulkerson testified that the Union held about a dozen meetings for Respondent's employees between October 2016 and March 2017. (Tr. 239.) On October 25, 7 employees attended a meeting. (GC Exh. 74.) On October 26, 14 employees attended a meeting. (Id.) On November 2, 8 employees attended a meeting and on November 6, 10 employees attended a meeting. (Id.) On November 30, 17 employees attended a meeting. (Id.) On December 7, 17 employees attended a meeting. (Id.) On December 14, 14 employees attended a meeting. On December 21, only 7 employees attended a meeting. (Id.) By March 14, only 8 employees and Frierson, attended a meeting. (GC Exh. 75.)

Fulkerson testified, without contradiction, that support for the organizing drive dropped following Frierson's discharge. (Tr. 249.) Fulkerson testified that he had difficulty getting employees to speak with him, on the phone or in person, or attend meetings after Frierson's discharge. (Tr. 249.) Of the 12 employees pictured on GC Exh. 72 supporting the Union, only 7 of the 12 remain employed by Respondent.²⁹ (Tr. 539.)

O. Respondent's Employee Handbook

Respondent maintains an employee handbook, which became effective in April. (GC Exh. 66.) This handbook contains several relevant policies, including those regarding workplace violence, drug testing, and holiday pay.

Respondent's employee handbook indicates that fighting is strictly forbidden. (GC Exh. 66, p. 44.) It further indicates that Respondent will not tolerate workplace violence, including threatened or actual conduct of a violent nature that harms another person on company property

and a safety violation, and a suspension for fighting, was not discharged. (Id.)

²⁷ Luis Lugo signed a card, but his name does not appear on the *Excelsior* list. (GC Exh. 13.) In addition, GC Exh. 30 was not admitted into evidence at the hearing and I did not consider it for purposes of determining the propriety of a bargaining order.

²⁸ Fulkerson clarified that employees of MTIL and employees of staffing companies serving MTIL attended these meetings. (Tr. 241.)

²⁹ Although Chandler initially testified that 85 percent of the Union supporters pictured on GC Exh. 72 remain employed by Respondent, he later changed his testimony to indicate that only 7 of the 12 (only about 58 percent) remain employed. (Tr. 493, 539.)

or is severe, offensive, or intimidating. (GC Exh. 66, p. 49.) The handbook states that a violation of the workplace violence policy will result in action against the offending employee, up to and including termination. (Id.)

5 The handbook calls for drug testing only in the following circumstances: pre-employment; when an employee is involved in a work-related accident involving a vehicle or equipment; when an employee is involved in unsafe or negligent use of company property, or; when 2 or more supervisors have reasonable suspicion to believe an employee is under the influence of alcohol or drugs. (GC Exh. 66, p. 58.)

10 Respondent recognizes 5 holidays: New Year's Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. (GC Exh. 66, p. 11.) The employee handbook states that employees may be paid for these holidays only after one year of continuous service. (GC Exh. 66, p. 11.)

15 DISCUSSION AND ANALYSIS

A. *Witness Credibility*

20 A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Corp.*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Corp.*, 335 NLRB at 622.

30 Some of my credibility findings are incorporated into the findings of fact above. My observations, however, were that the General Counsel's witnesses were generally composed and forthright when they testified. By contrast, Respondent's witnesses evinced a single-minded desire to reiterate the message that Respondent did not threaten or interrogate employees, did not bear animus toward Frierson's union activities, and did not fire Frierson for his union activity. However, Respondent's witnesses were unable to consistently explain the events leading up to Frierson's discharge. Furthermore, Respondent's witnesses could not explain Respondent's bonus program.

40 I found Frierson to be a credible witness. He testified in a calm and convincing manner. His testimony was corroborated by other witnesses. Where his testimony conflicted with that of other witnesses, I found his testimony more detailed and plausible. For example, while Bradley, Chandler, and Hudson gave differing, implausible versions of the events surrounding Frierson's discharge, Frierson's version was partially corroborated by Fulkerson. Frierson's testimony regarding what was said at mandatory employee meetings was corroborated by Bendezu, Collins, and Wilmot. Frierson candidly admitted using insubordinate language, referring to Chandler repeatedly as "sir" and "boss" on the shop floor on December 13. (Tr. 163-165.)

I found Sean Fulkerson to be a credible witness. His testimony was given in a straightforward and specific manner. His testimony regarding support for the Union's organizing drive stands uncontroverted. His testimony regarding events in Respondent's parking lot on December 13 was corroborated by Frierson. As such, I credited Fulkerson's testimony.

I further found Bendezu, Collins, and Wilmot to be credible witnesses. All are current employees of Respondent who testified pursuant to a subpoena issued by the General Counsel. Current employees are likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests. *Advocate South Suburban Hospital*, 346 NLRB 209 fn. 1 (2006), citing *Flexsteel Industries*, 316 NLRB 745 (1995), *affd. mem. NLRB v. Flexsteel Industries*, 83 F.3d 419 (5th Cir. 1996); see also *American Wire Products, Inc.*, 313 NLRB 989, 993 (1994) (Current employee providing testimony adverse to his employer is at risk of reprisal and thus likely to be testifying truthfully).

Bendezu testified in a soft-spoken, but credible manner. His testimony regarding Respondent's mandatory meetings was corroborated by other employees. His testimony regarding the collection of union authorization cards stands unrebutted. Bendezu candidly admitted facts that could reflect negatively on his actions. For example, he admitted that he was not aware that he needed to sign the union authorization cards he collected. Thus, I credited Bendezu's testimony.

Wilmot testified in a relaxed, but intentional manner. Wilmot's brief testimony did not waver on cross examination. His testimony regarding holiday pay was supported by Respondent's own employee manual. His testimony regarding mandatory employee meetings is corroborated by other employees. Therefore, I credit Wilmot's testimony.

Collins testified in a quiet manner, but her brief testimony had the ring of truth. Her testimony regarding the mandatory employee meetings was corroborated by other employees. Her testimony regarding being paid for the Christmas holiday in 2016 was corroborated by Wilmot. Respondent only cross-examined her about employee fighting, drug testing, and her union authorization card. Her testimony did not waver on cross examination. As such, I credited her testimony.

I found Tasha Lee to be a credible witness. Her brief testimony regarding seeing Chandler comment on a union flyer in the break room in December was concise and specific. Respondent did not cross-examine her about this testimony. Therefore, I credit her testimony.

I do not credit certain portions of Willie Stevens' testimony. His testimony was given in a reluctant manner and he was sometimes difficult to understand. At some points, he required considerable prompting by the General Counsel. Specifically, I did not credit Stevens' testimony regarding his alleged interrogation by Chandler. Stevens' testimony regarding Chandler's alleged interrogation for wearing a union button at work and regarding a threat of relocating unit work was as follows:

Q. Did anyone from management ever speak to you about wearing the button?
A. I think someone asked me about it. Cornelius asked me about it, what were they or whatnot.

Q. Did he ask you what you were wearing?

A. I don't really remember all the details, but yeah, he asked me about it.

Q. Were you at work when he asked you about it?

A. Yeah.

5 Q. Do you know what day did he asked you?

A. Not at all.

Q. Did Cornelius ever ask you what your issues with management were?

A. Before he concerned with all of us. He asked us all before.

Q. Before what?

10 A. I mean before I mean, just previously. In the past he asked, trying to find out how we felt about everything.

Q. Let's talk about the time period after the union started organizing. Did he ever talk to you about why you might want a union?

A. Yeah. I think we did have that talk before.

15 Q. Did he tell you what would happen if a union came in?

A. I can't recall.

Q. Did he mention the company relocating if the union came in

A. Something like that, he was saying.

...

20 A. He said there was a possibility that they may relocate.

Q. How about anything regarding shutdown?

A. No, not that I remember.

...

Q. But you do recall that he said they might relocate?

25 A. Yeah.

(Tr. 205-207.) This testimony is not clear and lacks detail regarding Stevens' exchange with Chandler. As such, I do not credit it.

30 I further did not credit Stevens' testimony regarding the solicitation of grievances at the December 14 meeting:

Q. As far as what the translator said at that meeting, can you tell us what you recall that he translated?

35 A. I really don't, but I think it was probably pertaining to, like, I guess, trying to get down towards finding out what was [sic] our issues with everything. Why did we want to go with the union.

(Tr. 207-208.) This testimony was uncertain and vague. As such, I do not credit it.

40

I do, however, credit Stevens' testimony regarding random drug testing. After refreshing his recollection with his pretrial affidavit, Stevens confidently testified that Haya, though Villanueva, told employees that they would be fired if they failed a drug test. (Tr. 213.) I further credit Stevens' testimony that Frierson left the facility on December 13 immediately after being told to do so by Chandler. (Tr. 216.) These pieces of testimony are corroborated by other employees. As such, I credit Stevens' testimony on these points.

45

I found Tonia Zekas to be a credible witness. She testified in a sure and convincing manner. Her testimony was largely supported by other evidence. For example, her testimony about Haya giving Ousley a raise is supported by payroll records and Haya's own admission. Her testimony regarding when Respondent knew of the Union's organizing drive is supported by the petition and her emails. Her testimony about fighting is supported by the testimony of several employees. As such, I have credited her testimony.

Respondent presented a great deal of evidence regarding the circumstances of Zekas' termination in an effort to impeach her testimony. (R. Exh. 1, 4, 14.) For example, Respondent presented an allegedly forged doctor's note. (R. Exh. 4.) Respondent also hinted that Zekas took a computer when she was discharged. However, no evidence, such as testimony by anyone at the doctor's office, or a police report or internal report, was produced in support of these claims. Respondent also presented a document kept by Haya recording when Zekas was late to work, left early, or took an extended lunch. (R. Exh. 14.) I do not find that the circumstances surrounding Zekas' discharge show bias or a motive to testify untruthfully. Regardless of the circumstances leading to Zekas' discharge, her relevant testimony was corroborated by other documents and witnesses. Her demeanor on the witness stand, coupled with the corroboration of her testimony, led me to credit it.

I did not find Simon Lopez to be a credible witness. His testimony was contradicted by other witnesses and evidence. Much of his testimony was given in response to leading questions, despite an admonition that such testimony might be given less weight.³⁰ (Tr. 375.) Significantly, Lopez' asserted reason for the handwritten bonus checks, Zekas' alleged theft of a company computer, was contradicted by Chandler. Hudson, who ensures that the payroll is correct, was not even asked about the bonuses. Thus, I do not credit Lopez' testimony generally, and specifically do not credit his testimony regarding the employee bonuses given in December.

I did not find Lionel Hudson to be a credible witness. Under cross-examination, Hudson's testimony was rife with qualifiers and hedging. Although he testified that Frierson provided a statement regarding his interaction with Chandler on the shop floor on December 13, no such statement was ever produced. (Tr. 434.) Later, under cross-examination, Hudson backtracked and testified that he only asked Frierson to give a statement. (Tr. 448.) His testimony regarding the confrontation in the office between Chandler and Frierson was unsure:

Q. He wasn't escorted out by security, was he?

A. Not that I saw.

Q. But you saw him leave the office?

A. I saw him exit the office.

Q. When he exited the office, he wasn't being escorted by security, correct?

A. Not that I saw.

Q. You saw him exit the office?

A. Yes.

Q. Was a security officer with him when he exited the office?

A. Not that I can remember. Not that I saw.

³⁰ Testimony adduced by leading questions on direct examination is entitled to only minimal weight. *H.C. Thompson, Inc.*, 230 NLRB 808, 809 fn. 2 (1977).

(Tr. 440–441.) He also frequently used qualifiers during his brief testimony, including “I believe” and “from my recollection.” (Tr. 429, 431, 434, 435, 436, 438, 440, 442, 444, 445, 446, 447, 449, 452, 453.) Based upon his demeanor while testifying, as well as the vagueness of his testimony, I did not credit the testimony of Hudson, except where it was corroborated by another, more credible witness.)

I did not find Chandler to be a credible witness. His testimony was often rambling and self-serving. Chandler also sparred with the General Counsel. He engaged in the following exchange regarding the severity of Frierson’s allegedly threatening behavior:

Q. We talked about Mr. Frierson's discharge regarding the verbal threats that you couldn't recall?

A. Yes.

Q. But he was terminated because it was a pretty bad thing, a verbal threat, correct?

A. Yes.

Q. Would you say it's just as bad as beating a pregnant girlfriend?

A. Yes.

Q. But it's not worse than beating your pregnant girlfriend because that employee was only suspended, correct?

A. I don't understand what you're asking me.

Q. Mr. Frierson was terminated for a verbal threat, and I'm asking you, is a verbal threat a higher offense than beating your pregnant girlfriend?

...

Q. Is a verbal threat—I'm not really sure what the words for the verbal threat were. I don't know if you recalled them yet, have you, that Mr. Frierson made?

A. No.

Q. But is a verbal threat a higher level of—

A. I would assume that would be a physical threat if somebody walked over with a closed fist, correct?

Q. Is walking with a closed fist while making an unknown verbal threat worse than beating your pregnant girlfriend on the plant floor?

A. Yes.

Q. It is worse?

A. In my opinion, yes.

(Tr. 528–530.) Testimony that a verbal threat is more serious than beating a pregnant person defies credulity and this, along with other inconsistencies, led me not to credit much of Chandler’s testimony.

Chandler testimony was generally inconsistent. He testified that part of the reason for Frierson’s discharge was a verbal threat made to him [Chandler], however, he could not remember the threat. Chandler’s testimony was also contradicted by other evidence. For example, Chandler testified that Frierson was not terminated based on his allegedly insubordinate behavior on the shop floor, but both Hudson and General Counsel Exhibit 70 indicate that the incident on the shop floor was part of the reason for Frierson’s termination.

Given Chandler's lack of recall of key details, argumentative demeanor, and inconsistent testimony, I did not credit his testimony unless it was corroborated by another, more credible witness, or credible evidence, or constituted an admission against Respondent's interest.

I did not find Gerald Bradley to be a credible witness. His testimony was often vague and nonspecific. He used qualifiers such as "basically." (Tr. 553, 554, 566.) He frequently talked over the General Counsel under cross-examination. He also quibbled with the General Counsel. He engaged in the following exchange when asked if he felt threatened by Frierson's actions in the office:

Q. Did you ever feel threatened during this discussion with Mr. Frierson?

A. You say what?

Q. Did you feel threatened during this discussion with Mr. Frierson?

A. I don't know. I kind of had mixed emotions and stuff.

Q. Probably not too threatened because you actually walked outside to talk to him, correct?

A. There's a difference between threatened and fear. I didn't have any fear.

Q. I haven't got to that. Did you feel threatened?

A. I didn't have any fear.

(Tr. 578-579.) Furthermore, Bradley's testimony regarding his confrontation with Frierson in the parking lot on December 13 defied logic. Although Bradley was on the clock as a forklift lead at the time of the confrontation, his confrontation with Frierson took place in Respondent's parking lot. Bradley incredulously testified that his job assignment includes, "everything in the factory and the parking lot." (Tr. 582.) Given his demeanor and highly questionable testimony, I did not credit Bradley's testimony unless it was corroborated by another, more credible witness.

I did not credit the written statements of Bradley or Chandler, as both are self-serving and contradicted by other evidence. (R. Exhs. 16, 19.) Both statements mention that Frierson was aggressive while being insubordinate in refusing to return to his workstation on December 13. (Id.) However, Frierson's suspension form does not mention that he was aggressive during this incident. (GC Exh. 71.) Instead, General Counsel Exhibit 71 indicates that Frierson was aggressive with Chandler and coworkers during and following the later incident in the office.

I further did not credit the testimony of Respondent's witnesses regarding the confrontation between Frierson and Chandler in the office on December 13. Hudson stated that they were not shouting, but instead, "talking passionately." He also was not sure if Frierson escorted out by a security guard. Bradley and Chandler testified that Frierson interrupted a meeting, was yelling and cursing, and was eventually escorted out of the office by a guard. Chandler testified that Frierson walked at him with a closed fist. Bradley testified that Frierson "reared up," but did not mention a closed fist. Hudson did not mention Frierson having a closed fist or rearing up. Given these inconsistencies, I do not credit the testimony of Bradley, Chandler, or Hudson regarding the confrontation in the office between Frierson and Chandler.

I did not credit the brief testimony of employee John Mierlak. Although Mierlak testified that he told other employees that unions are no good at a meeting on December 7, other employees testify that it was Haya and Villanueva who made this statement. The lawfulness of

this statement is not at issue and Mierlak did not testify in detail about what was said by Haya and Villanueva. Thus, as his sparse testimony did not bear on any relevant issue in this case, I did not credit Mierlak's testimony.

5 Furthermore, I did not credit the testimony of Ramon Haya. Haya became frustrated under cross-examination and raised his voice. He further failed to give a direct answer in response to the General Counsel's questions regarding prior dealings with unions:

Q. The MTIL facility in Europe, are they unionized?

10 A. Yes.

...

Q. So you've dealt with unions before, correct?

A. Yes, I do, but I never talk to them.

Q. You mean you never talk to the people who would run the union?

15 A. In the companies that we have in Europe, when the plant wants to come into the plant with a union, you already know that they are going to come and they work in a different way.

Q. That wasn't my question, sir. So my question is you've unionized employees under you, correct?

20 A. One, yes. One, no.

...

Q. The employees, at MTIL in Europe, they have a union, yes or no?

A. Yes, there is unions [sic].

25 Q. And you're the operations manager—I'm sorry. What was your position when you worked in Europe? I'll clarify. The last position that you held.

A. It's the same position that Cornelius [Chandler] has at the plant in Illinois.

Q. So you were production manager over the unionized employees, correct?

A. Yes.

Q. So you had dealt with unions before?

30 A. When we knew that the unions want to get in, yes.

(Tr. 642-643.)

35 I further did not credit Haya's testimony that he was unable to speak or understand English at the time of the events giving rise to this case. It seems extremely unlikely that the highest ranking official at the Bolingbrook facility (Haya) was unable to communicate with the second highest ranking official at the facility (Chandler). Villanueva testified that he has heard Haya use broken English. Also, several employees testified that they heard Haya using some English during the period of events at issue. Although it is clear that Haya did not speak perfect English,
40 it seems that he was able to communicate using some English. Thus, in the limited circumstances where employees heard Haya speaking in English, I credit the testimony of those employees.

45 I credited some of the testimony of Lidia Chavez. Chavez is a lead employee who testified on behalf of Respondent. Chavez testified about what she heard Haya say at the mandatory employee meetings. She stated that Haya told employees about how unions work. However, I do not credit her testimony that during the meeting she asked a question and told Haya that

unions are no good. This testimony was contradicted by other employees and Villanueva, who said employees did not ask questions.

Unlike Respondent's other witnesses, Chavez did not testify that Frierson came into the office and banged on a door or interrupted a meeting in order to get his write up. Chavez is a second shift lead and would have been at the meeting described by Bradley and Chandler on December 14. Thus, as her testimony does not match with that of Bradley and Chandler about Frierson's actions in seeking the write up, this provides further support for my finding that the incident with Frierson in the office did not take place as testified to by Bradley and Chandler.

I did not find Villanueva to be a credible witness. He tended to give very long-winded answers to simple questions. He further gave conflicting testimony regarding Haya's use of English:

Q. Mr. Villanueva, have you ever heard Ramon [Haya] speak in English?

A. Half and half actually. Very minor, broken English, but he's predominantly Spanish speaking.

Q. But you have heard him speaking English?

A. A word here or there, but then he shifts into his native language.

...

Q. So have you heard Ramon say more than "hi" or "how you doing" in English?

A. No.

(Tr. 709-710.) Thus, Villanueva's testimony quickly changed from stating that Haya spoke English about half of the time, to stating that he used minor and broken English, to stating that it was never more than a simple greeting.

Furthermore, Villanueva's testimony conflicted with that of Haya. Villanueva testified that he prepared with Haya for the December 7 meeting, but Haya denied preparing with Villanueva. (Tr. 616, 689-690.) Villanueva testified that he prepared a typed, bullet point document to help Haya prepare for the December 14 meeting. (Tr. 693.) Haya was not asked about preparing for the December 14 meeting.

Chandler, Haya, Lopez, and Villanueva, were all asked in a series of leading questions by Respondent's counsel, if they ever threatened, coerced, gave extra benefits to, promised extra benefits to, intimidated, or interrogated employees or witnessed such actions. All denied ever wither engaging in these activities or witnessing such activities. These denials stand in sharp contrast to the testimony of current and former employees, including Frierson, Zekas, Collins, Wilmot, and Bendezu. I credit the employees' more specific testimony over these general denials.

B. Respondent Violated the Act when Chandler Interrogated and Threatened Employees in Early December (Complaint Paragraph VI(a))

The Board considers the totality of the circumstances in determining whether the questioning of an employee constitutes an unlawful interrogation. *Rossmore House*, 269 NLRB 1176 (1984), enf. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In

determining the lawfulness of an interrogation, the Board evaluates whether, under the circumstances, it reasonably tended to restrain, coerce, or interfere with the employees' exercise of their rights protected under the Act. *Bristol Industrial Corp.*, 366 NLRB No. 101 slip op. at 1 (2018), citing *Rossmore House*, 269 NLRB at 1178. In employing the *Rossmore House* test, the Board considers the factors set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): whether there was a history of employer hostility or discrimination; the nature of the information sought (whether the interrogator was seeking information to base taking action against individual employees); the position of the questioner in the company hierarchy; the place and method of interrogation, and; the truthfulness of the reply. The Board further considers whether or not the interrogated employee is an open and active union supporter. *Bristol Industrial Corp.*, 366 NLRB No. 101, slip op. at 1. The *Bourne* factors are not mechanically applied, but instead represent areas of inquiry for consideration in evaluating an interrogation's legality. *Id.*, citing *Rossmore House*, 269 NLRB at 1178 fn. 20.

In evaluating the interrogation of Wilmot under the *Rossmore House* standard, I find that it violated Section 8(a)(1) of the Act. After observing Wilmot's photograph on a union flyer, Chandler asked if he signed the document. Respondent evinced hostility toward employee union activity immediately upon the filing of the petition. This hostility is evident in the threat of job loss made by Chandler, threats of plant closure and relocation by Haya, and the invitation to employees by Haya to quit their jobs if they didn't like their wages. Chandler asked Wilmot whether he signed the flyer, which contained the words "UE Yes." Thus, Chandler was, in essence, asking whether Wilmot intended to vote for union representation in the upcoming election.

I have no doubt that this questioning, brief as it was, was coercive and unlawful. This questioning, by the second highest ranking official at the Bolingbrook facility, took place in the facility office. Wilmot gave a truthful reply. However, questioning by a high-ranking management official about whether an employee planned to vote in support of union representation, coupled with the atmosphere of hostility toward the union's campaign, is not lawful. The Board has found that as a general matter, placing employees in a position in which they reasonably would feel pressured to make an observable choice that demonstrates their support for or rejection of the union is coercive. (Internal quotation marks omitted). *Space Needle LLC*, 362 NLRB No. 11 slip op. at 4 (2015), citing *Allegheny Ludlum Corp.*, 333 NLRB 734, 739-740 (2001), *enfd.* 301 F.3d 167 (3d Cir. 2002). I find that under the totality of the circumstances, this interrogation tended to restrain, coerce, or and interfere with Wilmot's exercise of his rights protected under the Act.

However, I am not able to find that the General Counsel established that the alleged interrogation of Stevens violated the Act. I did not credit Stevens' testimony regarding the interrogation. Stevens testified that Chandler asked him about his union button at work. Stevens did not recall any other circumstances regarding this conversation with Chandler. He also did not remember Chandler asking him at that time about what his issues with management were. Instead, he remembered Chandler asking him about his concerns "before." When asked if Chandler coupled his questioning with a threat, Stevens only responded after prompting by the General Counsel. Even after being prompted, Stevens only recalled that Chandler mentioned "something like that." As such, I am unable to find that the General Counsel met her burden to

prove that Respondent violated the Act in interrogating Stevens. I recommend that this allegation be dismissed.

5 C. *Respondent Violated the Act when Haya Granted Benefits and Made an Implied Promise of Benefit to Ousley (Complaint Paragraph VI(b))*

10 I have found that on December 2, Zekas overheard a conversation in Haya's office between Haya and employee Labrie Ousley. Haya offered Ousley \$500 if he could get the line to vote against the Union. Ousley replied that he could do it and he could get everyone to cooperate with him. When the conversation moved out into the hallway, Zekas heard Ousley say that he could definitely get the whole line to vote nonunion. Haya gave Ousley 3 green company t-shirts. As Ousley was walking away, Haya instructed Zekas to process a \$1.25 per hour raise for Ousley, making him one of the highest paid production workers in the facility.

15 It is well settled that the promise or grant of benefits, such as a raise, made by an employer to dissuade employees from organizing violates Section 8(a)(1) of the Act. Offering financial inducements to employees during an organizing campaign is a classic violation of the Act. *Low Kit Mining Co.*, 309 NLRB 501, 507 (1992.) A grant of benefits made by an employer during a union organizing campaign violates the Act unless the employer can demonstrate that its action was governed by factors other than the pending election. *Shamrock Foods Co.*, 366 NLRB No. 115 (2018). The employer bears the burden of proving that it would have conferred the same benefit in the absence of the union organizing campaign. *Id.* To meet this burden, the employer needs to establish that the benefits conferred were part of a previously established company policy and the employer did not deviate from that policy on the advent of the union. *Id.*, citing 20 *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958 (2004). Respondent here has offered no cogent justification for Ousley's raise. There is further no explanation for Haya's offer of \$500 if Ousley could get his line to vote against the Union. Through these actions, Respondent has violated Section 8(a)(1) of the Act.

30 D. *Respondent Violated the Act as Alleged through Haya's and Villanueva's Threat of Plant Closure or Relocation at the December 7 Mandatory Meeting (Complaint Paragraph VI(c)(ii))*

35 I have credited the testimony of Bendezu, Collins, and Frierson, that Haya, through Villanueva, stated that the plant would move or close down if the Union won the upcoming election. Implicit, as well as explicit, threats of plant closure if employees vote for a union violate Section 8(a)(1) of the Act. *Dlubak Corp.*, 307 NLRB 1138, 1145 (1992). A threat to relocate a plant similarly violates Section 8(a)(1) of the Act. *Kunja Knitting Mills U.S.A., Inc.*, 302 NLRB 545, 545 (1991). Threats of plant closure are among the most flagrant threats which an employer can make to adversely influence employee union involvement and commitment. 40 *Belle Knitting Mills*, 331 NLRB 80, 101 (2000). Therefore, I find that the statements of Haya and Villanueva at the December 7 meetings that the plant would close or relocate if the Union won the election violated Section 8(a)(1) of the Act.

E. Respondent Violated the Act as Alleged by Granting Bonuses in December (Complaint Paragraph VI(d))

It is well established that the granting or promising of benefits during the pendency of an election petition is evidence of intentional interference with employees' Section 7 rights and is presumed to be for the illegal object of influencing employees. *Sara Lee Bakery Group*, 342 NLRB 136, 142 (2004), citing *Lampi, L.L.C.*, 322 NLRB 502, 502 (1996). In *NLRB v. Exchange Parts Co.*, 375 US 405 (1964), the Supreme Court stated: "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." *Id.*

Respondent's managers did not offer a logical reason for the huge uptick in employee bonuses, including through the issuance of handwritten checks, in December. Furthermore, Respondent's managers and could not explain Respondent's bonus program. Neither Lopez nor Chandler could explain how production influences the amount of the bonus.

Furthermore, Respondent's witnesses could not coherently explain why some bonus checks were handwritten in December. Lopez testified that bonus checks were prepared manually in December because Zekas took a company computer when she was discharged. Chandler testified that following Zekas' discharge, Hudson had problems processing the payroll. Hudson was not asked about the issuance of handwritten checks or the processing of the December bonuses.

However, Respondent's payroll records, and copies of the handwritten checks, show a spike in bonus payments in December. In late May, Respondent gave 24 employees bonuses, ranging from \$25 to \$75. In early July, Respondent gave 37 employees bonuses, ranging from \$25 to \$50. In early August, Respondent granted 28 employees bonuses, ranging from \$15 to \$100. In early September, Respondent granted bonuses to 26 employees, ranging from \$15 to \$50. In early October, Respondent granted bonuses to 31 employees, ranging from \$15 to \$100. At the end of October, Respondent granted bonuses to 30 employees, ranging from \$15 to \$50. In early November, Respondent granted a \$45 bonus to Labrie Ousley. (*Id.*) In mid-November, Respondent granted a \$400 bonus to Chandler.

In mid-December, 27 unit employees were given bonuses via handwritten checks. In addition to the handwritten checks, Respondent gave bonuses to 54 unit employees via its regular payroll in December. Thus, Respondent distributed 81 bonuses to 78 unit employees in the month of December, between the time of the filing of the petition and the agreed upon election date. In total, 16 unit employees received bonuses of \$100 or more in December. Prior to December, no more than 31 employees at a time received bonuses. The number of employees receiving a bonus in December represents an increase of over 38% percent over the previous high point in early October. Prior to December, only one unit employee had received a bonus of \$100. In December, 16 employees received a bonus of \$100 or more.

It cannot be disputed that Respondent gave out large bonuses to an unprecedented number of unit employees in December. These bonuses were awarded during the pendency of the Union's election petition. Respondent has not offered a reasonable explanation for the increase or the

unusual manner in which the bonuses were processed. Therefore, I find that Respondent violated Section 8(a)(1) of the Act in awarding employee bonuses in December.

F. Respondent Violated the Act as Alleged by Haya Interrogating Frierson (Complaint Paragraph VI(e))

I find that Respondent's interrogation of Frierson violated the Act. As stated above, in employing the *Rossmore House* test, the Board considers the factors set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964), whether there was a history of employer hostility or discrimination; the nature of the information sought (whether the interrogator was seeking information to base taking action against individual employees); the position of the questioner in the company hierarchy; the place and method of interrogation, and; the truthfulness of the reply.

Frierson was interrogated by Haya, the highest-ranking official at the Bolingbrook facility. Haya asked Frierson, more than once, what he could do to avoid the employees' voting in support of the Union. This questioning took place at the Bolingbrook facility during work time. Haya's hostility to employees' union activity is implicit in his asking how he could avoid the employees' selecting union representation. Questioning by a high ranking management official seeking advice on how to avoid employees' selecting union representation, coupled with the atmosphere of hostility toward the union's campaign, was not lawful. I find that under the totality of the circumstances, this interrogation tended to restrain, coerce, or and interfere with Frierson's exercise of his rights protected under the Act.

G. Respondent Violated the Act as Alleged by Chandler Making and Implied Promise of Benefit (Complaint Paragraph VI(f))

On December 12, Frierson had a conversation with Chandler near the water fountain. Chandler told Frierson that everyone is not going to make it. He went on to say, "the important people, yeah, we can take care of them, but we can't take care of everybody." Chandler then mentioned that he could give Frierson a \$3 raise. Chandler was not asked whether he offered or promised an employee a raise. Thus, Frierson's testimony on this point stands un rebutted.

Chandler's statement to Frierson that he could take care of some people, combined with his offer of a raise, constitutes an implied promise of benefit. This was clearly an effort by Chandler to dissuade Frierson from supporting the Union. Therefore, Chandler's offering a raise to Frierson violated Section 8(a)(1) of the Act.

H. Respondent Violated the Act by Threatening Employees with Job Loss and Drug Testing and Promising Holiday Pay to Employees on December 14 (Complaint Paragraph VI(h))

At the December 14 meeting, Haya and Villanueva threatened employees. Haya conducted the meetings in Spanish and his words were translated into English by Villanueva. During the December 14 meetings, Haya stated that there would be drug tests and employees who did not pass would be fired. Haya also told employees if you do not like your job, quit. He also said if you do not want to work with these wages, go find a new job.

If an employer tells employees to resign or invites employees to quit in response to their Section 7 activity, the employer conveys a message to employees that their support for union and their continued employment are incompatible. *Bates Paving & Sealing, Inc.*, 364 NLRB No. 46 (2016), citing *McDaniel Ford*, 322 NLRB 956, 956 fn. 1 and 962 (1997). See also *Chinese Daily News*, 346 NLRB 906, 906, 919 (2006), enfd. 224 Fed. Appx. 6 (D.C. Cir. 2007) (implied threat telling employee to resign if she was not happy with her job).

Additionally, threatening to institute a drug testing program should employees choose union representation has been found to violate the Act. *United/Bender Exposition Services*, 293 NLRB 728, 733 (1989). Respondent's employee handbook calls for drug testing only in the following circumstances: pre-employment; when an employee is involved in a work-related accident involving a vehicle or equipment; when an employee is involved in unsafe or negligent use of company property, or; when 2 or more supervisors have reasonable suspicion to believe an employee is under the influence of alcohol or drugs. (GC Exh. 66, p. 58.) Haya's announcement at the mandatory meeting that employees would be subjected to drug testing without reason clearly threatened a more stringent drug testing policy. Thus, Haya's invitation to employees to quit if they did not like their jobs or wages, as conveyed through Villanueva, violated Section 8(a)(1) of the Act.

Furthermore, at the December 14 meeting, Haya, through Villanueva, told employees that Respondent would begin paying for holidays. Employees were then paid for Christmas a few weeks later. Haya admitted that employees were paid for Christmas due to complaints of not being paid for Thanksgiving. Despite Haya's testimony that he was planning to pay employees for Christmas, his testimony is directly contradicted by Respondent's employee handbook, which states that employees are only eligible for holiday pay only after 1 year of service.

The promising of a paid holiday during a union organizing campaign has been found to violate the Act. *Sara Lee Bakery Group*, 342 NLRB at 150. See also *Kingwood Mining Co.*, 171 NLRB 125, 128 (1968) (granting paid holiday for the first time just after a union requested recognition violated the Act.) Thus, I find that Haya's promise of holiday pay for Christmas violated Section 8(a)(1) of the Act.

Although the General Counsel alleged that Respondent violated the Act by soliciting grievances and promising bonus benefits at the meeting, I do not find that the record supports these allegations. Initially, I did not credit part of the testimony of Stevens, in which he stated that Respondent solicited grievances through Villanueva, "I really don't, but I think it was probably pertaining to, like, I guess, trying to get down towards finding out what was [sic] our issues with everything. Why did we want to go with the union." I found this testimony too uncertain to credit. As Stevens' testimony was the only evidence supporting the alleged solicitation of grievances, I cannot find that the General Counsel proved this violation. I recommend that this allegation be dismissed.

Moreover, I do not find that the General Counsel established that Respondent promised bonus benefits at the December 14 meeting. I can find no mention in the record of any such promise. As such, I do not find a violation based upon the promising of bonus benefits. I recommend that his allegation be dismissed.

I. Respondent Violated the Act by Threatening Employees with Termination if the Supported the Union (Complaint Paragraph VI(i))

Frierson left flyers in support of the Union in Respondent's break room in early December. The flyer contained a large photo of Respondent's employees, including Frierson, at the top. Under the photo appeared signatures of several employees. At the bottom, under the signatures, the flyer said, "We Are the Majority!" and "UE YES."

Tasha Lee was in Respondent's break room in early December, where she observed Chandler pick up one of the flyers. When Chandler picked up the flyer, he said that if the Union wins, there's going to be a lot of people getting fired.

Threats to discharge employees if a union wins a representation election violate the Act. *Chelyan Foodland*, 245 NLRB 779, 781 (1979). See also *Aljoma Lumber, Inc.*, 345 NLRB (2005) (finding that threatening an employee with possible discharge if the union were to win the upcoming election, conveyed a message that support for the Union could have dire consequences, including a loss of jobs.) Similarly, in this case, Chandler's statement in Lee's presence conveyed a message that employees would lose their jobs if the union were to win the election. As such, Respondent violated Section 8(a)(1) of the Act by threatening employees with job loss if the Union were to win the election.

J. Respondent Violated the Act by Discharging Frierson (Complaint Paragraph VII)

In determining whether an employee's discharge is unlawful, the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, to establish unlawful discrimination on the basis of union activity, the General Counsel must make an initial showing that antiunion animus was a substantial or motivating factor for the employer's action by demonstrating that: (1) the employee engaged in union activity; (2) the employer had knowledge of that union activity; and (3) the employer harbored antiunion animus. *Nichols Aluminum*, 361 NLRB 216, 218 (2014), citing *Amglo Kemlite Laboratories*, 360 NLRB 319, 325 (2014). Proof of animus and discriminatory motivation may be based on direct evidence or inferred from circumstantial evidence. *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004); *Ronin Shipbuilding*, 330 NLRB 464, 464 (2000). If the General Counsel meets his burden, then the burden shifts to Respondent to prove that it would have taken the same action absent the employee's protected conduct. *Wright Line*, 251 NLRB at 1089; *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983).

The Board relies on both circumstantial and direct evidence in determining whether the conduct in question was unlawfully motivated. *Fluor Daniel, Inc.*, 311 NLRB 498 (1993). Unlawful employer motivation may be established by circumstantial evidence, including, among other things, (1) the timing of the employer's adverse action in relationship to the employee's protected activity, (2) the presence of other unfair labor practices, (3) statements and actions showing the employer's general and specific animus, (4) the disparate treatment of the discriminatees, (5) departure from past practice, and (6) evidence that an employer's proffered

explanation for the adverse action is a pretext. *National Dance Institute--New Mexico, Inc.*, 364 NLRB No. 35, slip op. at 10 (2016).

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act when it discharged Frierson for assisting the Union. Frierson was the point person for the Union in its campaign to organize Respondent's employees. Respondent argues, in its defense, that Frierson was not discharged for his union activity and that Frierson's confrontations on December 13 caused him to lose the protection of the Act. (R. Br. 10-11.) For the reasons discussed herein, I conclude that Frierson's engaging in union activity, including his support of the union on two flyers distributed at Respondent's facility, was a motivating factor in his discharge.

It is undisputed that Frierson engaged in union activity and that Respondent had knowledge of his union activity. Frierson collected numerous union authorization cards from Respondent's employees. Frierson appeared prominently in two flyers distributed in Respondent's facility in early December. Haya noticed Frierson's picture on the flyer as evidenced by his statement to Frierson, "nice picture." Chandler admitted that he became aware of Frierson's union activity in early December. Thus, I find that the General Counsel has proven that Frierson engaged in union activity and that Respondent was aware of his union activity.

It is also clear that Respondent bore animus toward its employees' union activity. When Chandler saw the flyer with Frierson's picture on it, he stated that employees would lose their jobs if the union won the upcoming election. Also, Respondent launched a vigorous anti-union campaign prior to Frierson's discharge. As found above, Respondent interrogated employees and multiple threats of plant closure or relocation and increased drug testing. Respondent further offered and granted employees benefits and bonuses in order to discourage union activity. Respondent further gave an employee a raise and promised him more money if he could convince others to vote against the union. Thus, there is ample evidence that Respondent bore animus toward its employees' efforts to organize.

Furthermore, I find that the timing of these threats, promises, and granting of benefits supports a finding that Respondent was motivated by anti-union animus in discharging Frierson. Respondent became aware of its employees' organizing activity in late November and began threatening, interrogating, and promising and granting benefits to its employees in early December. Frierson was suspended and discharged on December 14. Additionally, Frierson's discharge came just days after he rejected Haya's solicitation to advise him on how to avoid a union victory in the election and within days of Chandler promising Frierson a raise. Animus can be inferred from the relatively close timing between an employee's protected concerted activity and his discipline. *Corn Brothers, Inc.*, 262 NLRB 320, 325 (1982) (timing of discharge within a week of union organizing meeting evidence of antiunion animus); *Sears Roebuck & Co.*, 337 NLRB 443, 451 (2002) (timing of discharge, several weeks after employer learned of protected concerted activities, indicative of retaliatory motive); *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002) (timing of discipline imposed 4 months after service on bargaining team and ULP hearing appearance suspect). Thus, I find that the timing of Frierson's discharge, within 2 weeks of learning of his union activity and that of his fellow employees, coupled with my

finding of other unfair labor practices, supports a finding that his discharge was motivated by antiunion animus.³¹

As the General Counsel has established that Frierson engaged in union activity, that Respondent was aware of Frierson's union activity, that Respondent bore animus to Frierson's and his fellow employees' union activity, and that Frierson's union activity was a motivating factor in his termination, the burden now shifts to Respondent to show that it would have taken the same action in the absence of Frierson's union activity.

The employer cannot meet its burden merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086-1087 (2011); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443, 443 (1984). If the employer's proffered reasons are pretextual—i.e., either false or not actually relied on—the employer fails by definition to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007); *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003); *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), *enfd.* 705 F.2d 799 (6th Cir. 1982).

In this case, I find that the reasons asserted by Respondent for its discharge of Frierson are pretextual. Respondent allegedly discharged Frierson for insubordination and making a threat of violence. Hudson's testimony regarding his investigation of Frierson's actions on December 13, lacked detail and support. Hudson testified that he did not witness an incident on the shop floor between Chandler and Frierson, and relied upon Chandler's written and verbal statements to determine what happened. Hudson could only recall that Chandler told Frierson to return to his work area and Frierson refused. Hudson did not find out how long it took Frierson to return to work. Hudson did not obtain a statement from Frierson regarding what transpired before he was suspended or discharged.³²

Respondent indicates that Frierson was insubordinate in refusing to return to his work station after speaking with Chandler on the shop floor. (GC Exh. 71, Tr. 445.) However, on Frierson's discharge paperwork, Respondent indicated that Frierson was insubordinate in failing to exit the facility after direction. (GC Exh. 70.) See *Lucky Cab Co.*, 360 NLRB 271, 274 (2014) (shifting reasons for an employer's adverse actions are not only persuasive evidence of discriminatory motive, but also serve as evidence of pretext); *Approved Electric Corp.*, 356 NLRB 238 (2010) (citing *City Stationery, Inc.*, 340 NLRB 523, 524 (2003); *GATX Logistics, Inc.*, 323 NLRB 328, 335 (1997) ("Where . . . an employer provides inconsistent or shifting reasons for its actions, a reasonable inference can be drawn that the reasons proffered are mere pretexts designed to mask an unlawful motive.")). Respondent's failure to maintain a consistent rationale for its discharge of Frierson support a finding that the proffered reasons are pretextual.

³¹ Also, as explained more fully below, I have found that Respondent treated Chandler disparately and that its explanation of his discharge is a pretext.

³² See *New Orleans Cold Storage & Warehouse Co.*, 326 NLRB 1471, 1477 (1998) ("The failure to conduct a meaningful investigation and to give the employee who is the subject of the investigation an opportunity to explain are clear indicia of discriminatory intent."), *enfd.* 201 F.3d 592 (5th Cir. 2000).

Regarding the alleged threat of violence, Hudson testified that it occurred when Frierson allegedly threatened to kick Bradley's ass on December 14. (Tr. 447.) However, in a written statement made shortly after the incident, Bradley did not specify the threat made by Frierson. (R. Exh. 16.) Chandler, who had input into Frierson's discharge, testified that Frierson made a verbal threat toward him [Chandler], but then testified he could not remember any verbal threat made by Frierson. (Tr. 516-517.)

The evidence further establishes that Frierson received disparate treatment in being discharged for insubordination and making a verbal threat. Prior to December 13, Frierson had never been suspended, written up, or received a verbal warning.

By way of example, both Frierson and Zekas observed a physical altercation between Ousley and Moore. At the time of the altercation, Moore was pregnant. The police were called to the facility regarding this altercation. Moore and Ousley were both suspended, but neither was discharged. A disciplinary report for Moore showed that she had received a written warning for insubordination, a written warning for a safety violation, and a suspension for fighting, but she was not discharged.

Frierson, however, was discharged for allegedly being insubordinate and making a threat of violence against coworkers. Even assuming arguendo that Frierson threatened to kick Bradley's ass and approached Chandler with a clenched fist, these actions do not rise to the level of physically beating a pregnant woman. Additionally, Moore, who had a more serious disciplinary history, was not discharged following multiple infractions. As such, I find that Frierson was treated disparately and that Respondent's reasons for his discharge are pretextual.

Many of the General Counsel's witnesses testified that they observed actual fighting at Respondent's facility that did not result in the discipline of any party. Although Zekas and Frierson testified that they saw frequent fights at the facility, and Bendezu Wilmot, and Collins only testified to seeing a few fights, all of them testified that the parties to the fight were not punished. Even though records indicate that Moore and Ousley were suspended, neither was fired as a result of their altercation. The import of this evidence is that it shows that Respondent clearly tolerated physical fighting by other employees at its facility.

Therefore, I find that Respondent's stated reasons for discharging Frierson were pretextual, and that the facts of this case warrant an inference that Respondent's true motive was an unlawful one that it wished to conceal. *Richard Mellow Electrical Contractors*, 327 NLRB 1112, 1115 (1999); *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (1966). Consequently, I find that Frierson's discharge violated Section 8(a)(3) and (1) of the Act.

It is worth noting that I did not find, as urged by Respondent, that Frierson made threats to Bradley or Chandler, or that Frierson approached Chandler with a clenched fist in a threatening manner. Therefore, I decline to undertake an analysis under *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979), as to whether Frierson's alleged actions cost him the protection of the Act.

K. *A Gissel Bargaining Order is Warranted*

In complaint paragraph IX, the General Counsel has requested a remedial bargaining order pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Although such a remedy is extraordinary, I find the General Counsel has met her burden to prove it is appropriate under the circumstances present in this case.

A showing of majority status is a prerequisite to the imposition of a Gissel bargaining order. *Philips Industries*, 295 NLRB 717, 718 fn. 10 (1989). The General Counsel has established that the Union obtained majority status as of November 30. By November 30, the Union had obtained cards from 56 of Respondent's 86 employees. (GC Exhs. 2-12, 14-29, 31-60, 64.) Each card clearly states that the signing employee accepted membership into the Union and authorized it to represent him or her. (Id.) Frierson and Bendezu authenticated the signature on each of these cards. It is settled law that where an issue is raised as to the authenticity of signatures on cards, they may be authenticated by persons other than the card signer, including persons who witnessed the signing or who received the cards from the signatories. *Koons Ford of Annapolis, Inc.*, 282 NLRB 506, 514 (1986), citing *McEwen Mfg. Co.*, 172 NLRB 990, 992 (1968), enf. sub nom. *Amalgamated Clothing Workers v. NLRB.*, 419 F.2d 1207, 1209-1210 (D.C. Cir. 1969), cert. denied 397 U.S. 988 (1970).

Respondent argues that several of the cards should not be counted as they misidentify the signatory's employer or lack a date or identity of the person receiving the cards. (R. Br. pp. 13-14.) In support of its argument, Respondent cites *First Legal Support Services*, 342 NLRB 350 (2004). In that case, the Board found that the General Counsel did not prove that the union obtained majority status because one card was an undated photocopy. 342 NLRB at 351. Two employees who collected the union cards gave conflicting testimony as to how this particular card was collected. Id. In the present case, the testimony authenticating each card was not confusing or conflicting. Instead, Bendezu and Frierson authenticated each card and testified that the cards were collected between late October and the filing of the petition or early December. (Tr. 110, 263.) Of the cards in evidence that are dated, all except one have dates in October or November. (GC Exh. 2, 7-12, 14-26, 28-29, 31-33, 35-36, 38-42, 44-48, 50, 52-54, 56-57, 59-60.) Board law is clear that undated cards are valid if the testimony in the record shows that the card or cards in question were signed prior to the crucial date. *Union Carbide Corp.*, 166 NLRB 441, 445 (1967). As in *Union Carbide*, there is sufficient testimony by the people who received the cards, to show that the undated cards were signed prior to the filing of the petition. Id. See also *Salt Lake Division, A Division of Waste Management of Utah, Inc.*, 310 NLRB 883, 910 (1993) (a card need not be accurately dated—or dated at all—to be valid, provided the approximate signing date can be established by other means.) Therefore, I find that the lack of a date on some of the cards does not render them invalid.

I further do not find that the misidentification of the employer on the cards makes them invalid. Respondent's facility in Bolingbrook, Illinois, was previously operated by IFCO. IFCO performed the same work as MTIL, the sanitizing of plastic crates for the food industry. The sign on the side of the building still read "IFCO" as of the date of the hearing. Additionally, some employees still wore shirts that said "IFCO" at the time of the hearing. Respondent's employee handbook describes its business as a provider of washing reusable plastic containers (RPC) for IFCO. Thus, some of Respondent's employees were understandably confused

regarding the identity of their employer. However, 56 of the cards were signed by individuals who appear on Respondent's *Excelsior* list of employees. (GC Exh. 64.) Thus, I do not find that the misidentification of the employer by some card signers renders their cards invalid.

5 Similarly, I do not find that information such as missing addresses or telephone numbers should make these cards invalid. A card introduced into evidence through the testimony of the person receiving it and witnessing the signing of the card, has been found to be properly authenticated and valid, despite missing information regarding the name of the company, the company address, and the signer's job title. *Loy Food Stores, Inc.*, 259 NLRB 305, 311-312
10 (1981). Therefore, I find the cards with missing information such as employee's address and job title, to be valid.

The purpose of a remedial bargaining order is "to remedy past election damage [and] deter future misconduct."³³ The Supreme Court had sanctioned the issuance of such a bargaining order
15 "where an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined the union's majority. . . ." *Gissel*, 395 U.S. at 610; see also *NLRB v. Katz*, 369 U.S. 736, 748, (1962). Thus, the Board has the authority to order an employer to recognize and bargain with a union, even if the employees have not voted for union representation in an election.

20 The Supreme Court in *Gissel* identified two categories of employer misconduct that might implicate a bargaining order. Category I cases involve outrageous and pervasive unfair labor practices that make a fair election impossible. 395 U.S. at 613. Category II cases involve less extraordinary and less pervasive unfair labor practices, which have nonetheless undermined
25 majority union support, once expressed through authorization cards, rendering the possibility of a fair election slight. 395 U.S. at 614; *Vista Del Sol Health Services, Inc.*, 363 NLRB No. 135 (2016); *Milum Textile Services*, 357 NLRB 2047, 2056-2057 (2011).

30 As to Category I, I have found that widespread and pervasive unfair labor practices have been committed by Respondent. These unfair labor practices included highly coercive hallmark violations including the suspension and discharge of the lead union organizer, widespread threats of job loss and facility closure, interrogation of employees, the promise and granting of benefits in order to discourage support for the Union. See *Stevens Creek Chrysler Jeep Dodge*, 357
35 NLRB 633, 637-638 (2011) (Respondent's discharge of the leader of the organizing effort along with threats and granting of wage increases warranted *Gissel* order); *Evergreen America Corp.*, 348 NLRB 178, 180 (2006) (grant of wage increases and promotions are hallmark violations requiring the issuance of a *Gissel* order).

40 Threats of job loss and plant closure are "hallmark" violations, long considered by the Board to warrant a remedial bargaining order because their coercive effect tends to destroy election conditions, and to persist for longer periods of time than other unfair labor practices. *Hogan Transports, Inc.*, 363 NLRB No. 136 (2016) citing *Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 663 (2011); *Evergreen America Corp.*, 348 NLRB 178, 180 (2006). Discharging a lead union adherent has also been found to be a hallmark violation. *Mid-East Consolidation
45 Warehouse*, 247 NLRB 552, 560 (1980). Awarding wage increases has long been held to be a

³³ *Gissel*, supra.

substantial indication that a bargaining order is warranted because they have a particularly long lasting effect on employees and are difficult to remedy by traditional means not only because of their significance to the employees, but also because the Board's traditional remedies do not require a respondent to withdraw the benefits from the employees. *Hogan Transports, Inc.*, citing
 5 *Evergreen America*, 348 NLRB at 180. In this case, Respondent committed all of these hallmark violations, and other violations, including the granting of widespread employee bonuses, within the few weeks after the filing of the Union's petition with the Board.

10 These threats and other actions came from the highest level of management, were disseminated to the entire bargaining unit, and continued from the time of the filing of the petition until just before the scheduled union election. The threat of plant closure was made by the highest ranking official at Respondent's Bolingbrook facility. A threat of plant closure and the discharge of the Union's lead organizer are the types of dire warnings and concrete measures
 15 certain to exert a substantial and continuing coercive impact on any employee, contemplating a vote in favor of unionization. See *Weldun Intern., Inc.*, 321 NLRB 733, 734, and 748 (1996), enfd. mem. in relevant part 165 F.3d 28 (6th Cir. 1998) (mass layoff of employees coupled with threat of plant closure precluded a fair election and required issuance of a bargaining order.)

20 I am persuaded that these violations make it unlikely that traditional Board remedies will create the conditions required for a fair and reliable election. Based on the foregoing, I find, therefore, that based on the severity and pervasiveness of the unfair labor practice, a bargaining order is warranted under Category I. *Electro-Voice, Inc.*, 320 NLRB 1094 (1996).

25 As correctly stated by the General Counsel, the Board has affirmed a judge's finding that a bargaining obligation attached under *Gissel* as of the date a union filed a petition for an election with the Board. *Salt Lake Division, A Division of Waste Management of Utah, Inc.*, 310 NLRB 883 (1993) (see conclusion regarding majority section of decision). Thus, I find that Respondent's bargaining obligation attached as of November 30, the date of the filing of the
 30 Union's petition.

CONCLUSIONS OF LAW

1. Respondent has been an employer engaged in commerce within the meaning of
 35 Section 2(2), (6), and (7) of the Act.
2. United Electrical, Radio and Machine Workers of America, Local 1103 (Union), is a labor organization within the meaning of Section 2(7) of the Act.
3. By interrogating employees on multiple occasions, Respondent has engaged in unfair
 40 labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
4. By threatening employees with plant closure or relocation on multiple occasions,
 45 Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

5. By threatening employees with job loss and termination on multiple occasions, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

5 6. By making implied promises of benefits and granting benefits to employees on multiple occasions in order to discourage union support or activity, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

10 7. By granting employees bonuses in order to discourage union support or activity, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

15 8. By promising holiday pay in order to discourage union support or activity, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

20 9. By discharging employee Bobby Frierson, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

10. Respondent has not otherwise violated the Act as alleged in the complaint.

REMEDY

25 Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

30 The Respondent, having discriminatorily discharged employee Bobby Frierson, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

35 Respondent shall also expunge from its files any reference to Bobby Frierson's unlawful discharge and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

40 In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate Bobby Frierson for search-for-work and interim employment expenses, regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

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In addition, Respondent shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 13. Respondents will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since December 1, 2016. When the notice is issued to Respondent, it shall sign it or otherwise notify Region 13 of the Board what action it will take with respect to this decision.

The General Counsel has requested that the notice be read aloud in English and Spanish by a responsible management official of Respondent or a Board agent in the presence of a responsible management official of Respondent. (GC Exh. 1(h).) The Board requires this remedy when an employer's misconduct has been "sufficiently serious and widespread that reading of the notice will be necessary to enable employees to exercise their Section 7 rights free of coercion." *Jason Lopez' Planet Earth Landscape, Inc.*, 358 NLRB 383, 383 (2012). The Board has held that in determining whether additional remedies are necessary to fully dissipate the coercive effect of unlawful discharges and other unfair labor practices it has broad discretion to fashion a remedy to fit the circumstances of each case. *Casino San Pablo*, 361 NLRB 1350, 1355-1356 (2014); *Excel Case Ready*, 334 NLRB 4, 4-5, (2001). The Board has noted that "[t]he public reading of a notice is an 'effective but moderate way to let in a warming wind of information and, more important, reassurance.'" *United States Service Industries*, 319 NLRB 231, 232 (1995), *enfd.* 107 F.3d 923 (D.C. Cir. 1997) (quoting in part *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969)). In light of the severity and pervasiveness of the violations detailed in this decision, I find that the General Counsel has established that this remedy is required to enable employees to exercise their Section 7 rights free from coercion. See *Casino San Pablo*, *supra*; see also *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), *enfd.* 273 Fed. Appx. 32 (2d Cir. 2008); *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995).

Respondent is further ordered, upon request, to recognize and bargain in good faith with United Electrical, Radio and Machine Workers of America, Local 1103 (Union) as the exclusive collective-bargaining representative of the following appropriate unit of employees (unit):

All full-time and regular part-time production and maintenance employees including quality control, sort stackers, tickers, wrappers, stackers, forklift operators, throwers, mechanics, pallet jackers, loaders, lead persons, and janitors employed by the Respondent at its facility currently located at 400 West

Crossroads Parkway, Bolingbrook, Illinois 60440; excluding all office clerical employees, employees of temporary agencies and guards, professionals and supervisors as defined by the Act.

- 5 Respondent shall put into writing and sign any agreement reached regarding the terms and conditions of employment of the unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁴

10

ORDER

Respondent, MTIL, Inc., Bolingbrook, Illinois, its officers, agents, successors, and assigns, shall

15

1. Cease and desist from

(a) Interrogating employees regarding their support for the Union.

20

(b) Threatening employees with plant closure or relocation.

(c) Threatening employees with job loss and termination.

25

(d) Making implied promises of benefits and granting benefits to employees in order to discourage support for the Union or union activity.

(e) Granting employees bonuses in order to discourage union support or activity.

(f) Promising holiday pay in order to discourage union support or activity.

30

(g) Discharging employees because of union activity.

(h) Refusing to bargain in good faith with the Union, Graphic Communications Conference International Brotherhood of Teamsters, Local 6-505M, by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

35

All full-time and regular part-time production and maintenance employees including quality control, sort stackers, tickers, wrappers, stackers, forklift operators, throwers, mechanics, pallet jacks, loaders, lead persons, and janitors employed by the Respondent at its facility currently located at 400 West Crossroads Parkway, Bolingbrook, Illinois 60440; excluding all

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³⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

office clerical employees, employees of temporary agencies and guards, professionals and supervisors as defined by the Act.

- 5 (i) In any like or related manner interfering with, restraining, or coercing employees of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- 10 (a) Within 14 days of the date of this Order, offer Bobby Frierson full reinstatement to his former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- 15 (b) Make Bobby Frierson whole for any loss of earnings and other benefits suffered as a result of his unlawful discharges less any net interim earnings, plus interest.
- (c) Compensate Bobby Frierson for any adverse tax consequences of receiving a lump-sum backpay award.
- 20 (d) Reimburse Bobby Frierson for reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings, plus interest.
- 25 (e) Within 21 days of the date that the amount of backpay is fixed, either by agreement or Board Order, file a report allocating backpay with the Regional Director for Region 13. Respondent will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.
- 30 (f) Within 14 days, remove from its files any reference to the discharge of Bobby Frierson and, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way, including in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker.
- 35 (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, Social Security payment records, timecards, personnel records and reports, and all other records, including an
- 40 electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- 45 (h) Within 14 days after service by the Region, post at its Bolingbrook, Illinois, facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to

employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 2016.

(i) Within 14 days after service by the Region, hold a meeting or meetings during working hours at the Bolingbrook facility, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to employees by a responsible management official of Respondent, or, at Respondent's option, by a Board agent in the presence of a responsible management official of Respondent.

(j) Respondent is further ordered, upon request, to recognize and bargain in good faith with United Electrical, Radio and Machine Workers of America, Local 1103 (Union) as the exclusive collective-bargaining representative of the following appropriate unit of employees (unit):

All full-time and regular part-time production and maintenance employees including quality control, sort stackers, tickers, wrappers, stackers, forklift operators, throwers, mechanics, pallet jackers, loaders, lead persons, and janitors employed by the Respondent at its facility currently located at 400 West Crossroads Parkway, Bolingbrook, Illinois 60440; excluding all office clerical employees, employees of temporary agencies and guards, professionals and supervisors as defined by the Act.

Respondent shall put into writing and sign any agreement reached regarding the terms and conditions of employment of the unit.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that paragraph VI(a) only as it relates to the interrogation of Stevens, paragraph VI(h)(2) regarding the soliciting of employee grievances, and paragraph VI(h)(3) only as it relates to the promise of employee bonus benefits, of the complaint are dismissed.

Dated, Washington, D.C. July 16, 2018



Melissa M. Olivero
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you about your union activities or support for United Electrical, Radio and Machine Workers of America, Local 1103 (Union) or your union activity.

WE WILL NOT threaten you by telling you that we will close or relocate our facility if you choose to be represented by or support a union.

WE WILL NOT threaten you with job loss or termination because of your union support or activities.

WE WILL NOT question you about your complaints or grievances or imply that we will remedy them in order to discourage you from supporting a union or engaging in union activity.

WE WILL NOT offer or grant you benefits in order to discourage you from supporting a union or engaging in union activity.

WE WILL NOT ask you to solicit other employees to vote no in a union election.

WE WILL NOT promise you better benefits or give you better benefits in order to discourage you from supporting a union or engaging in union activity.

WE WILL NOT discharge you for supporting a union or engaging in union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, recognize and bargain in good faith with United Electrical, Radio and Machine Workers of America, Local 1103 (Union) as the exclusive collective-bargaining representative of our employees; and WE WILL put into writing and sign any agreement reached

regarding terms and conditions of employment for our employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees including quality control, sort stackers, tickers, wrappers, stackers, forklift operators, throwers, mechanics, pallet jackers, loaders, lead persons, and janitors employed by the Respondent at its facility currently located at 400 West Crossroads Parkway, Bolingbrook, Illinois 60440; excluding all office clerical employees, employees of temporary agencies and guards, professionals and supervisors as defined by the Act.

WE WILL offer Bobby Frierson full reinstatement to his former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL within 14 days of this Order, remove from our files any reference to our unlawful discharge of Bobby Frierson and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way, including in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker.

WE WILL make Bobby Frierson whole for any loss of earnings and other benefits resulting from our unlawful firing of him, less any net interim earnings, plus interest.

WE WILL reimburse Bobby Frierson for reasonable search-for-work, interim employment expenses regardless of whether those expenses exceed interim earnings, and consequential economic harm they may have incurred, plus interest.

WE WILL compensate Bobby Frierson for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the "Notice to Employees" is to be read in English and in Spanish by Respondent's representatives Ramon Haya-Trueba and/or Cornelius Chandler in the presence of a Board Agent. Alternatively, WE WILL hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the "Notice to Employees" is to be read in English and in Spanish by a Board Agent in the presence of Ramon Haya-Trueba and/or Cornelius Chandler.

MTIL, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Dirksen Federal Building, 219 South Dearborn Street, Suite 808, Chicago, IL 60604-5208
(312) 353-9158, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/13-CA-189867 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (312) 353-7170.